

establish a quorum, the Clerk announced to the House the receipt of the credentials of: Delegate-elect Walter E. Fauntroy, of the District of Columbia, Delegate-elect Antonio Borja Won Pat, of Guam, Delegate-elect Ron De Lugo, of the Virgin Islands, and Resident Commissioner-elect Jamie Benitez, of Puerto Rico. As the names of Delegates and Resident Commissioners are not called to establish a quorum or to vote for Speaker, their names were not included on the Clerk's roll.

Parliamentarian's Note: The credentials of Delegates expire with the term of the House, but the Resident Commissioner's credentials extend for a four-year term.

§ 3.9 The Clerk informs the House of the receipt of the credentials of the new Resident Commissioner of Puerto Rico to fill a vacancy, whereupon the Commissioner is sworn.

On Jan. 3, 1940,⁽⁵⁾ the Clerk of the House, South Trimble, informed the the House of the receipt of a certificate signed by the Governor of Puerto Rico, showing the appointment of Mr. Bolívar Pagán as Resident Commissioner of Puerto Rico, to fill a vacancy.

Mr. Pagán was then administered the oath of office.

5. 86 CONG. REC. 6, 76th Cong. 3d Sess.

§ 3.10 On one occasion the House was informed of the appointment of the Resident Commissioner of the Philippines by the President of the United States.

On Aug. 18, 1944,⁽⁶⁾ Speaker Sam Rayburn, of Texas, laid before the House a communication from the President of the United States, the Honorable Franklin D. Roosevelt, transmitting a communication from the President of the Philippines advising the President of the appointment of Colonel Carlos P. Romulo, as Resident Commissioner of the Philippines.

Parliamentarian's Note: The Philippine Government was sitting in Washington due to Japanese occupation of the Islands.

§ 4. The Clerk's Roll

The Clerk's roll is the list of Members-elect, arranged alphabetically by states, which the Clerk prepares in advance of the convening of a new Congress based on the certificates of election received by his office.⁽⁷⁾ That

6. 90 CONG. REC. 7102, 78th Cong. 2d Sess.

7. See 2 USC §26, directing the preparation of the Clerk's roll. As to the form of credentials and their transmission to the Clerk's office, see §3, *supra*.

particular roll is called only once, directly after the Congress convenes, in order to establish a quorum of Representatives-elect to proceed to the organization of the House.⁽⁸⁾ The roll does have a further purpose, in that it constitutes the first official declaration as to which persons claiming seats in the House are entitled to participate in the proceedings prior to election of the Speaker, and in the election itself.⁽⁹⁾

As indicated above,⁽¹⁰⁾ every Member-elect with regular creden-

tials on file with the Clerk has a right to be included on the Clerk's roll;⁽¹¹⁾ whether or not a specific set of credentials shows the person named therein to be regularly elected is a matter solely for the decision of the Clerk,⁽¹²⁾ who is the only official authorized to prepare the Clerk's roll (unless his office is vacant, in which case the Sergeant at Arms, or in his absence, the Doorkeeper, performs the Clerk's functions).⁽¹³⁾

Whether or not the Clerk may go behind the document of creden-

8. See, generally, Ch. 1, §5, *supra*, for the procedure at organization when the Clerk is presiding. The roll to elect the Speaker is called alphabetically on a roll call vote, with each Member casting his vote by declaring the name of the nominee of his choice. (See Ch. 1, §6, *supra*.) For the relationship between the Clerk's roll and regular rolls of the House, see §4.1, *infra*.
9. As the roll to elect a Speaker is based exclusively upon the Clerk's roll, a claimant to a seat who is not enrolled will not be called on the roll call vote (see §2, *supra*, for the right to participate of Members-elect). For the proposition that claimants not enrolled may not participate in organization until the House takes some action on their claims, see 1 Hinds' Precedents §§83-86. On the other hand, Members-elect enrolled may participate before the House decides that they were enrolled on insufficient evidence (see 1 Hinds' Precedents §366).
10. §3, *supra*.

11. In *Page v U.S.*, 127 U.S. 67(1888), the Supreme Court held, *inter alia*, that a Representative-elect whose credentials showed he was regularly elected must have been placed on the Clerk's roll under §31 of the Revised Statutes (now, 2 USC §26).
12. See the provisions of 2 USC §26, which do not specify the required form of credentials, or the factors for determining whether they show the Member-elect was "regularly elected." In early times, a committee examined the credentials with the object of ensuring the regularity (see 1 Hinds' Precedents §§386, 387). Mere enrollment does not entitle a Member-elect to a seat, however, as the House determines both the *prima facie* and final entitlement to that right (see §6, *infra*); the House may review the action of the Clerk in enrolling Members-elect (see, generally, 1 Hinds' Precedents §§589-610).
13. See 2 USC §26. For a recent occasion where the Doorkeeper assumed the Clerk's functions, see §4.2, *infra*.

tials itself to determine whether to enroll a particular Member-elect depends on the specific circumstances of the case. In past Congresses, Members-elect have been enrolled where there was no certificate but there were communicated official statements from state authorities showing election return,⁽¹⁴⁾ or where the credentials were irregular but state law forbade rejection of credentials for mere informalities.⁽¹⁵⁾ On at least one occasion, the Clerk has inquired into the age qualification of a Member-elect who was not yet 25 years old when his credentials were presented, but who reached the age limit after Congress had convened.⁽¹⁶⁾ In contemporary practice, the Clerk will not enroll

a Member-elect unless credentials regular in form and in strict compliance with state law have been received.⁽¹⁷⁾

The Clerk's roll is directed to be read at the opening of a Congress by the Clerk, or by the officer who assumes his functions. The roll is called in the same manner in which it is prepared, alphabetically by state.⁽¹⁸⁾

Occasionally it is necessary to correct the roll, due to technical errors or due to changes in the membership. The roll has been corrected on the floor of the House by reference to credentials, when the roll contained a typographical error;⁽¹⁹⁾ where there are alleged errors in substance, the Clerk's roll will not be corrected until the

14. See 6 Cannon's Precedents § 597. For a recent instance of such action, see § 4.4, *infra*.

15. See 6 Cannon's Precedents § 557.

16. See 1 Hinds' Precedents § 418. For a full discussion of the meeting of qualifications before appearing to take the oath, but after the election or even after the convening of Congress, see Ch. 7, *infra*. A line of precedents in both the Senate and House suggest that a Member-elect lacking the age and citizenship requirements of U.S. Const. art. I, § 2, clause 2, at the time of election may forestall presenting his credentials and taking the oath until he satisfies those qualifications, after the convening of Congress.

17. Strenuous opposition was voiced in the House on the last occasion when the Clerk enrolled a claimant to a seat whose credentials had not yet been received (see § 4.4, *infra*). The Clerk has enrolled a Member-elect despite an order of the state supreme court restraining the issuance of the certificate of election (see § 4.3, *infra*). For similar past instances where credentials already delivered to the Clerk took precedence over adverse decisions by the highest court of the representative state, see 1 Hinds' Precedents §§ 56, 57.

18. See § 4.1, *infra*.

19. See 1 Hinds' Precedents § 25 (name of state Governor, instead of Member-elect, called by error).

time for the administration of the oath to Member.⁽²⁰⁾ Before the House meets, the Clerk may strike from the roll names of Members-elect whose certificates of election are on file, but who have resigned or who have died before the convening of a Congress.⁽¹⁾ However, such corrections are only made by the Clerk pursuant to official declarations by the executive of the state of representation. For example, in the 93d Congress, the name of a Member-elect whose seat the Governor had declared vacant pursuant to a presumptive death verdict was stricken from the Clerk's roll.⁽²⁾ But the name of a companion Member-

elect, who had disappeared under the same circumstances as the former, was not stricken from the roll, since the state of representation had not declared his seat vacant nor recognized the possibility of presumed death.⁽³⁾

The composition of the Clerk's roll is determinative of those persons entitled to be counted for the initial quorum of the House, and those persons entitled to vote for Speaker at the opening of a new Congress.⁽⁴⁾ In that respect, the regular roll differs substantially from the roll to establish a quorum or to elect a new Speaker at the beginning of a second session.

When the Speaker died between sessions of the 87th Congress, and several Members-elect appeared to fill vacancies at the beginning of the second session, those Members-elect were not called to establish a quorum or to elect a new Speaker, although their certificates of election were on file with the Clerk. They could not be sworn until after the Speaker was elected, and the regular roll of the House includes only those Mem-

20. The Clerk may not entertain motions to "correct" the roll by substituting the name of a claimant for the name of a Member-elect (see 1 Hinds' Precedents §§ 22-24). Challenges, which attempt to add the name of one person to the roll and to strike the name of another, are not made until the Speaker indicates that the administration of the oath is in order (see § 6, *infra*).

1. See §§ 4.6, 4.8, *infra*. For an exception to that procedure, see § 4.7, *infra* (where a Member-elect died moments before Congress convened, his name was not stricken from the roll until the House was informed of the death). The Clerk's power to strike the names of dead and resigned Members-elect is traditional (see 1 Hinds' Precedents §§ 26-28).

2. See § 4.8, *infra*.

3. See § 4.9, *infra*. Subsequently, the House itself declared the seat vacant, pursuant to presumptive death evidence, and the Member's-elect name was then stricken from further roll calls.

4. See § 2, *supra*.

bers who have qualified for membership by taking the oath.⁽⁵⁾ Therefore, although the Clerk's roll furnishes the preliminary basis for the regular roll of the House, the latter reflects changes in membership occurring after Congress convenes, such as adverse determination of election contests, resignations of Members-elect who decline to take the oath in favor of another office, and deaths.⁽⁶⁾

Form and Call of the Roll

§ 4.1 Unlike regular roll calls of the House, the Clerk's roll

5. See § 4.11, *infra*. On the same occasion, resignations of Members received during adjournment were not laid down prior to the vote for Speaker, although their names had been stricken from the roll of the House (see § 4.10, *infra*). That practice is to be distinguished from the procedure at the convening of a new Congress, where the Clerk announces before the election of the Speaker the names of those resigned Members-elect whose names have been stricken from the roll. See, *e.g.*, announcement of the Clerk as to a vacancy in the 92d Congress, 117 CONG. REC. 10, Jan. 21, 1971.
6. After organization, the roll of the House consists of those Members chosen, sworn, and living whose membership has not been terminated by resignation or by the action of the House. See 4 Hinds' Precedents §§ 2889–2890; 6 Cannon's Precedents § 638.

to establish a quorum of Representatives-elect at the convening of a new Congress is prepared and called alphabetically by states.

The Clerk's roll at the beginning of the 92d Congress was both prepared and called by state delegations, listed alphabetically.⁽⁷⁾ The roll to establish a quorum has taken that form at the beginning of every Congress.⁽⁸⁾ However, unless the roll is taken by electronic device (see Chs. 20, 30, *infra*) regular roll calls of the House are required to be called alphabetically by surname under House Rule XV.⁽⁹⁾ (After a quorum is established at the opening of a new Congress, the roll to elect a Speaker is called alphabetically, to which the Member responds by calling the surname of the nominee of his choice.)⁽¹⁰⁾

§ 4.2 Where the Clerk has died between Congresses, and in

7. 117 CONG. REC. 9, 10, 92d Cong. 1st Sess., Jan. 21, 1971.
8. In former Congresses, the roll to establish a quorum at the beginning of a new session during the term of a Congress was also called by states (see 1 Hinds' Precedents § 83).
9. Rule XV clause 1, *House Rules and Manual* § 765 (1973).
10. See, *e.g.*, 117 CONG. REC. 10, 11, 92d Cong. 1st Sess., Jan. 21, 1971. See also 1 Hinds' Precedents §§ 204–222.

the absence of the Sergeant at Arms, the Doorkeeper of the House directs the call of the roll of Representatives-elect, prepared under his auspices.

On Jan. 3, 1947,⁽¹¹⁾ the opening of the 80th Congress, the Doorkeeper of the House, Ralph R. Roberts, directed the call of the roll to establish a quorum and to elect a Speaker. The Doorkeeper assumed the functions of the Clerk of the House, in preparing the roll and directing the call thereof, pursuant to title 2, United States Code, section 26, appointing the Doorkeeper to perform those duties in the absence of both the Clerk and the Sergeant at Arms.

Clerk's Review of State Law

§ 4.3 A certificate of election in due form having been filed, the Clerk placed the name of the Member-elect on the roll, although he was subsequently advised that the state supreme court had issued a writ restraining the Secretary of State from issuing such certificate.

11. 93 CONG. REC. 33, 34, 80th Cong. 1st Sess.

On Jan. 3, 1949,⁽¹²⁾ Clerk John Andrews, of Massachusetts, made the following announcement:

A certificate of election is on file in the Clerk's office, showing the election of John C. Davies as a Representative-elect to the Eighty-first Congress from the Thirty-fifth Congressional District of the State of New York.

Several communications have been received from the executive deputy secretary of state for the State of New York informing the Clerk that a case is pending before the supreme court, Albany County, N.Y., and that the said secretary of state is restrained from certifying the election of a Representative from this congressional district. However, in view of the fact that a certificate of election in due form has been filed with the Clerk by John C. Davies, the Clerk has therefore placed his name on the roll. ⁽¹³⁾

§ 4.4 The House may authorize the Speaker to administer the oath of office to a Member-elect who appears with-

12. 9.5 CONG. REC. 8. 81st Cong. 1st Sess.

13. Under New York law, although Congress is the final judge of the qualifications of its own Members, until the certificate of election has been transmitted to and acted upon by Congress, New York state courts are open to a candidate who alleges that the certificate is being issued in violation of the law. *People ex rel. Brown v Board of Suprs. of Suffolk County*, 216 N.Y. 732, 110 N.E. 776 (1915) (mem.).

out credentials but whose name has been placed upon the roll of Members-elect by the Clerk, pursuant to a communication from the state Governor.

On Mar. 9, 1933,⁽¹⁴⁾ the House adopted a resolution authorizing the administration of the oath of office to Mr. John G. Utterback, of Maine, who reported on opening day without a signed certificate of election from the Governor of the State of Maine. The Clerk had placed the name of Mr. Utterback upon the Clerk's roll pursuant to a letter from the Governor of Maine stating that although the Member-elect apparently received a majority of the votes cast in the district the Governor was without authority to issue credentials due to the terms of a state law which required the concurrent action of the Governor and executive counsel before an election certificate could be issued.⁽¹⁵⁾

Adding New States to Roll

§ 4.5 The Clerk announced receipt of the proclamation of

14. 73 CONG. REC. 71, 72, 73d Cong. 1st Sess.

15. See the remarks, in opposing the enrolling of and the administration of the oath to the Member-elect without credentials, of Mr. Bertrand Snell (N.Y.), arguing that the action of the House and of the Clerk set a dangerous precedent. 73 CONG. REC. 71, 72, 73d Cong. 1st Sess.

statehood for a new state during the call of the Clerk's roll, and directed that the new state be called.

On Jan. 7, 1959,⁽¹⁶⁾ after the commencement of the call of the Clerk's roll on opening day, and after the call of the names of Members-elect from Alabama, the Clerk made the following announcement:

A certified copy of the Presidential proclamation indicating that the Territory of Alaska has qualified as a State pursuant to provisions of law has been received.

The clerk will proceed.

The Representative-elect from Alaska was then called.

Correcting the Roll for Deaths

§ 4.6 At the opening of a Congress the Clerk informs the House of vacancies in the Clerk's roll, occasioned by the death of Members-elect.

On Jan. 3, 1973,⁽¹⁷⁾ the opening day of the 93d Congress, the Clerk announced after the call of the Clerk's roll, which did not include the name of Member-elect George W. Collins, that the death of that Member-elect created a va-

16. 105 CONG. REC. 11, 86th Cong. 1st Sess.

17. 119 CONG. REC. 12, 93d Cong. 1st Sess.

cancy in the state delegation of Illinois.

§ 4.7 On an exceptional occasion, where a Representative-elect whose certificate of election was on file with the Clerk died moments before the House convened, his name was included on the Clerk's roll until the House was informed of his death after assembly.

On Jan. 10, 1967,⁽¹⁸⁾ the opening day of the 90th Congress, the name of Member-elect John E. Fogarty, of Rhode Island, was included on the Clerk's roll to establish a quorum, although Mr. Fogarty had died in his office shortly before the House was to convene. His name was not stricken from the roll of the House until the Clerk informed the House of his death, shortly after the call of the roll.

§ 4.8 The Clerk of the House omitted from the roll at the beginning of the 93d Congress the name of a Representative-elect, pursuant to the receipt of judicial certification of presumptive death, and of the state executive's declaration of vacancy.

18. 113 CONG. REC. 11, 12, 90th Cong. 1st Sess.

On Jan. 3, 1973,⁽¹⁹⁾ the opening day of the 93d Congress, the Clerk of the preceding House, W. Pat Jennings, directed the call of the Clerk's roll to establish a quorum. The reading clerk announced that the delegation of the State of Alaska was vacant. The name of Mr. Nick Begich, Representative-elect at large from that state, had been omitted from the Clerk's roll pursuant to the receipt by the Clerk of a certified copy of the certificate of presumptive death of Mr. Begich. The Clerk also informed the House, after the election of the Speaker, that the Governor of Alaska had declared the seat of Mr. Begich vacant.

§ 4.9 Where the state of representation did not certify, either through its judiciary or through its executive, the presumptive death of a Representative-elect, his name was placed on the Clerk's roll and not stricken from the roll of the House until the House determined the seat to be vacant.

On Jan. 3, 1973,⁽²⁰⁾ the opening day of the 93d Congress, Clerk of

19. 119 CONG. REC. 11 et seq., 93d Cong. 1st Sess.

20. 119 CONG. REC. 15, 93d Cong. 1st Sess.

the House W. Pat Jennings informed the House that he had placed upon the roll of Representatives-elect the name of Mr. Hale Boggs, of Louisiana, pursuant to the receipt of his certificate of election. The Clerk had, however, omitted from the roll the name of Mr. Nick Begich, of Alaska, who had been missing since Oct. 16, 1972, the date of the disappearance of an airplane on which Mr. Boggs had also been a passenger. Mr. Begich's name had been omitted from the roll pursuant to the receipt by the Clerk of a presumptive death certificate from the State of Alaska and pursuant to a telegram from the Governor of that state notifying the House that he had declared Mr. Begich's seat vacant. In Mr. Boggs' case, however, the Clerk had received certification from the State of Louisiana stating that no state court actions had been instituted to change Mr. Boggs' status or to affect the validity of his certificate of election, and stating that the Governor himself had taken no action to affect Mr. Boggs' status as a Representative-elect. Therefore Mr. Boggs' name had been placed on the roll and called to establish a quorum.

The House subsequently adopted a resolution determining Mr. Boggs' seat to be vacant, based on

documentary evidence and on the official certification by the State of Alaska of Mr. Begich's presumptive death. The name of Mr. Boggs was stricken from subsequent roll calls.

The resolution adopted by the House read as follows:

H. RES. 1

Whereas a certificate of election has been received by the Clerk of this House showing the election of Hale Boggs as a Representative in the Ninety-third Congress from the Second Congressional District in the State of Louisiana; and

Whereas Representative-elect Hale Boggs has not appeared to take the oath of office as a Member of this House; and

Whereas the Clerk of the House of Representatives, acting at the direction of the Speaker of this House for the Ninety-second Congress, has ascertained that Representatives Nick Begich and Hale Boggs, Members of the Ninety-second Congress, together with Russell L. Brown and Don E. Jonz of the State of Alaska, all of whom departed together by plane from Anchorage, Alaska, on October 16, 1972, on a flight bound for Juneau, Alaska, have been missing since that date and despite repeated and thorough searches have not been located; and

Whereas the District Court for the State of Alaska, Third Judicial District, after hearing witnesses and studying all available evidence relative to the disappearance of Representative Begich, Russell L. Brown and Don E.

Jonz, has determined that these three men cannot be found alive after such a lapse of time and are presumed dead; and

Whereas as a result of the findings of the jury in the aforementioned judicial proceeding the judge of the said court has signed certificates of presumptive death with respect to Representative Begich, Russell L. Brown and Don E. Jonz; and

Whereas no evidence has been presented to this House or is known to it which distinguishes the missing status of Representative-elect Hale Boggs from that of the three men for whom the aforementioned certificates of presumptive death have been issued; Therefore be it

Resolved, That based on information provided by its Clerk, this House of Representatives hereby determines that there is a vacancy in the Ninety-third Congress in the representation from the Second Congressional District in the State of Louisiana because of the absence of Representative-elect Hale Boggs.

Resolved, That the Speaker of the House is hereby directed to notify the Governor of the State of Louisiana of the existence of this vacancy so that appropriate measures to fill this vacancy may be undertaken by the Governor pursuant to Article I, Section 2 of the Constitution of the United States.

Resolved, That the Speaker be authorized to appoint a delegation of Members of this House, together with such Members of the Senate as may be joined, to attend memorial services to be held for the former Majority Leader in New Orleans, Louisiana, on January 4, 1973.

Resolved, That the Sergeant at Arms of the House be authorized and directed to take such steps as may be necessary to carry out the provisions of these resolutions and that the necessary expenses in connection therewith, as well as any incurred by the Clerk at the Speaker's request, be paid out of the contingent fund of the House.

Resolved, That the Clerk communicate these resolutions to the Senate, to the Governor of the State of Louisiana, and transmit a copy to the family of the missing Representative-elect Hale Boggs.

Roll to Begin Session

§ 4.10 Election of a new Speaker being the first order of business, resignations of Members received during the *sine die* adjournment after the first session were not laid down prior to the vote, but their names had been stricken from the roll and were not called to establish a quorum or to elect a Speaker at the opening of the second session.⁽¹⁾

1. This practice is distinguished from the procedure at the opening of a new Congress, where the Clerk announces vacancies immediately after the call of the Clerk's roll (which does not include the names of resigned Members) but before the election of a Speaker. See, *e.g.*, announcement of the Clerk as to a vacancy in the 92d Congress, 117 CONG. REC. 10, January 21, 1971.

On Jan. 10, 1962,⁽²⁾ the opening day of the second session, following the death of Speaker Sam Rayburn, of Texas, during the *sine die* adjournment, Clerk of the House Ralph R. Roberts called the roll to establish a quorum and proceeded immediately to the election of a Speaker. The names of Mr. Frank Ikard, of Texas, and Mr. Lester Holtzman, of New York, who had submitted their resignations during the *sine die* adjournment, were not included on the roll to establish the quorum or to elect a Speaker. Their resignations were not announced until after the election.

§ 4.11 Where the Speaker had died between sessions of the 87th Congress and a new Speaker was elected immediately after the second session had convened, Members-elect to fill vacancies with credentials on file were not called to establish the quorum or to elect a Speaker.⁽³⁾

2. 108 CONG. REC. 5-7, 87th Cong. 2d Sess.

3. The procedure followed in this instance differs from the practice at the opening of a new Congress, where all Members-elect with regular credentials are called to establish a quorum and to vote for a Speaker (see detailed discussion at §4, *supra*).

On Jan. 10, 1962,⁽⁴⁾ the opening day of the second session, Mr. Henry B. Gonzalez, of Texas, Mr. Joe Waggoner, Jr., of Louisiana, and Mr. Lucien N. Nedzi, of Michigan, all Representatives-elect to fill vacancies, were not sworn in until after the election of Speaker John W. McCormack, of Massachusetts. Their names were not placed on the roll to establish a quorum or to elect a Speaker.

§ 5. Administering the Oath

The Constitution requires, at article 6, clause 3, that every Senator and every Representative swear or affirm to uphold the Constitution of the United States. Since neither the form, nor the procedure of administration, nor the time of administration of the oath of office are specified by constitutional provisions, they are all regulated by statute. The form of the oath taken by Members-elect (the same oath taken by the Speaker and officers of the House)⁽⁵⁾ has undergone revision

4. 108 CONG. REC. 5-7, 87th Cong. 2d Sess.

5. 2 USC §26 requires the oath of the Speaker and Clerk as well as of Members. The form of the oath prescribed for an individual elected or appointed to an office in the civil